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PROPOSED PROGRAMME BUDGET FOR THE BIENNIUM 1996-1997

Conditions of service and compensation for officials other than Secretariat officials

Members of the International Court of Justice

Report of the Secretary-General

I. INTRODUCTION

1. The General Assembly, in paragraph 6 of resolution 48/252 A of 26 May 1994, decided that the emoluments and other conditions of service for the members of the International Court of Justice (ICJ) should next be reviewed at its fiftieth session in the light of the recommendations contained in the report of the Secretary-General (A/C.5/48/66). It further decided that the periodicity of review should be determined at the fiftieth session (ibid., para. 7).

2. In order to facilitate consideration of the various issues regarding the compensation and conditions of service of members of the Court, the present report is divided into the following sections: remuneration, including adjustment for currency fluctuation and cost of living; other conditions of service; pensions; analysis of the practice of the Court with respect to Article 16, paragraph 1, of the Statute of ICJ; financial implications; and the next comprehensive review.

II. REMUNERATION

3. Article 32 of the Statute of ICJ provides, inter alia, that each member of the Court shall receive an annual salary (para. 1), that these salaries and allowances "shall be fixed by the General Assembly" and that "they may not be decreased during the term of office" (para. 5).

4. Since 1976, the General Assembly has conducted a number of reviews of the emoluments of the members of the Court, most notably at its thirty-first, thirty-fifth, thirty-eighth, fortieth, forty-fifth and forty-eighth sessions. 1/ By paragraph 1 of resolution 45/250 A of 21 December 1990, the General Assembly decided that, with effect from 1 January 1991, the annual salary of the members of ICJ would be US$ 145,000. On the occasion of the 1994 review, the General Assembly, by paragraph 2 of resolution 48/252 A, maintained the annual salary of the members of ICJ at US$ 145,000.

5. The emoluments of the members of the Court are sui generis. However, on the occasion of previous reviews, a number of reference points have been used for assessment purposes: the net remuneration of senior Secretariat officials, of the Chairman of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), of the Chairman and Vice-Chairman of the International Civil Service Commission (ICSC), and of the members of the Joint Inspection Unit (JIU), as well as the gross emoluments of the president and members of the highest courts in national judiciaries from various regions of the world.

6. Tables 1 and 2 provide updated information concerning the evolution of emoluments from January 1993 to June 1995. Table 1 compares the movement of the Judges' total emoluments with changes in the remuneration of senior Secretariat officials and that of full-time members of other subsidiary bodies of the United Nations. Table 2 provides information obtained, with the assistance of Permanent Missions to the United Nations, on the movement in gross emoluments of the president and members of the highest courts in national judiciaries. The table also presents information on the movement in emoluments of the President and members of the Court of Justice of the European Communities in Luxembourg and of the Islamic Republic of Iran-United States Claims Tribunal in The Hague.

Table 1

Changes in net remuneration of members of the Court, Secretariat officials and members of United Nations bodies, 1993-1995

(In United States dollars, dependency rate)

	January 1993	January 1994	January 1995	June 1995
International Court of Justice				
President a/	160 000	160 000	160 000	160 000
Index	100.0	100.0	100.0	100.0
Members of the Court	145 000	145 000	145 000	145 000
Index	100.0	100.0	100.0	100.0
Senior Secretariat officials				
The Hague				
ASG b/ (dep. rate)	116 944	109 341	121 098	136 600
Index (dep. rate)	100.0	93.5	103.6	116.8
ASG b/ (single rate)	106 042	99 164	109 851	123 844
Index (single rate)	100.0	93.5	103.6	116.8
Geneva				
USG c/	150 185	158 707	173 461	193 907
Index	100.0	105.7	115.5	129.1
ASG b/	137 079	144 894	158 427	177 179
Index	100.0	105.7	115.6	129.3
New York				
USG c/	127 257	129 504	129 520	132 979
Index	100.0	101.8	101.8	104.5
ASG b/	116 050	118 110	118 125	121 297
Index	100.0	101.8	101.8	104.5
Full-time members of subsidiary bodies				
Chairman, ICSC/ACABQ d/	128 776	128 776	128 776	128 776
Index	100.0	100.0	100.0	100.0
Vice-Chairman, ICSC	120 776	120 776	120 776	120 776
Index	100.0	100.0	100.0	100.0
Members of JIU, Geneva	118 767	125 691	137 678	154 288
Index	100.0	105.8	115.9	129.9

a/ Includes special allowance of $15,000.
b/ Includes representation allowance of $3,000 a year.
c/ Includes representation allowance of $4,000 a year.
d/ Includes special allowance of $8,000 a year.

Table 2

Movement in gross emoluments of officers of national judiciaries, the Court of the European Communities and the Islamic Republic of Iran-United States Claims Tribunal, 1993-1995

	1993	1994	1995
1. United States Supreme Court			
Chief Justice (US$)	171 500	171 500	171 500
Index	100.0	100.0	
Associate Justice (US$)	164 100	164 000	164 100
Index	100.0	100.0	100.0
2. Supreme Court of Canada			
Chief Justice			
(Can$ a/, b/)	199 900	199 900	199 000
(US$)	157 402	151 439	142 786
Index	100.0	96.2	90.7
Puisne judge			
(Can$ b/, c/)	185 200	185 200	185 200
(US$)	145 827	140 303	132 286
Index	100.0	96.2	90.7
3. United Kingdom of Great Britain and Northern Ireland			
Lord Chief Justice			
(£ stg.)	112 083	112 083	118 179
(US$)	171 906	167 288	184 655
Index	100.0	97.3	107.4
Master of the Rolls			
(£ stg.)	103 790	103 790	109 435
(US$)	159 187	154 910	170 992
Index	100.0	97.3	107.4
4. Australia			
Chief Justice			
($A)	185 251	195 381	211 871
(US$)	127 759	132 014	164 241
Index	100.0	103.3	128.6
Justice			
($A)	168 397	177 604	192 604
(US$)	116 136	120 003	149 305
Index	100.0	103.3	128.6

	1993	1994	1995
5. Japan			
Chief Justice			
(¥)	43 732 089	44 268 943	44 268 943
(US$)	352 678	395 258	444 021
Index	100.0	112.1	125.9
Associate Judge			
(¥)	31 907 778	32 300 080	32 300 080
(US$)	257 321	288 394	323 973
Index	100.0	120.1	125.9
6. Democratic Socialist Republic of Sri Lanka			
Chief Justice			
(SL Rs)	--	349 200	349 200
(US$)	--	7 127	7 055
Index	--	100.0	99.0
Other Judge			
(SL Rs)	--	330 000	330 000
(US$)	--	6 735	6 667
Index	--	100.0	99.0
7. France			
President of Court of Cassation			
(FF)	--	463 271	470 702
(US$)	--	78 123	97 413
Index	--	100.0	124.7
8. Italy			
First President of the Court of Cassation			
(Lit d/)	--	96 369 006	99 355 481
(US$)	--	57 363	60 583
Index	--	100.0	105.6
9. Court of the European Communities			
President			
(BF e/)	8 559 119	8 559 119	8 679 311
(US$)	259 367	241 102	271 228
Index	100.0	93.0	104.6
Member			
(BF)	6 977 543	6 977 543	7 075 526
(US$)	211 441	196 551	221 110
Index	100.0	93.0	104.6

	1993	1994	1995
10. Iran-United States Claims Tribunal			
President (US$)	245 000	245 000	245 000
Index	100.0	100.0	100.0
United States-Iranian Judge (US$)	210 000	210 000	210 000
Index	100.0	100.0	100.0
Third country judge (US$)	235 000	235 000	235 000
Index	100.0	100.0	100.0

a/ Also entitled to a representation allowance of Can$ 10,000.

b/ Also entitled to an incidental allowance of Can$ 2,500.

c/ Also entitled to a representation allowance of Can$ 5,000.

d/ Also entitled to an allowance of Lit 14,523,180 in 1994 and Lit 14,973,253 in 1995.

e/ Also entitled to a residential allowance of BF 70,661.

7. In April 1987, ICSC introduced the concept of a local currency floor and ceiling at a number of duty stations, including The Hague, to protect staff against the weakening of the dollar. The background and the functioning of the floor/ceiling system, as applied to the emoluments of the members of the Court, are discussed in paragraphs 11 through 15 of the Secretary-General's report to the General Assembly at its forty-eighth session (A/C.5/48/66).

8. In paragraph 4 of its resolution 48/252 A, the General Assembly decided to continue the system of floor/ceiling measures introduced for members of the Court pursuant to section VI of Assembly resolution 43/217. Further to the information presented in paragraphs 13 and 14 of document A/C.5/48/66, the 1994 floor/ceiling exchange rates were derived by applying the previous formula of 4 per cent above and 4 per cent below the average exchange rate to the year 1993. The average exchange rate in 1994 was 1.82 guilders to the dollar and yielded revised floor/ceiling exchange rates of 1.75 and 1.89 guilders, respectively. The floor exchange rate of 1.75 guilders to the dollar resulted in a revised currency floor of 21,145 guilders per month and the ceiling exchange rate of 1.89 guilders to the dollar resulted in a revised currency ceiling of 22,837 guilders per month.

9. Table 3 below indicates the official exchange rate for the guilder against the dollar for the period January 1994-September 1995. Over the period, the floor amount has been payable for 11 months and the ceiling amount for three months. The 1996 floor/ceiling exchange rates will again be based on the average exchange rate for the previous year. Should the exchange rate remain at the same level of 1.65 guilders to the dollar for the remainder of 1995, the new

floor/ceiling rates would be 1.68 and 1.56 guilders, respectively. In that case, the currency floor would be 18,849 guilders per month and the currency ceiling 20,299 guilders per month.

Table 3

Exchange rate of the guilder to the dollar, January 1994-September 1995

	1994	1995
January	1.92	1.74
February	1.95	1.70
March	1.92	1.64
April	1.88	1.57
May	1.88	1.54
June	1.85	1.54
July	1.78	1.56
August	1.76	1.56
September	1.74	1.65
October	1.76	
November	1.69	
December	1.75	

10. The Secretary-General recalls that, while agreeing to an increase in the annual salary of the members of the Court from $101,750 to $145,000, ACABQ, in its eleventh report on the programme budget for the biennium 1990-1991, recommended that "there would be no cost-of-living adjustment or supplement as is currently the case. Nor would there be a post adjustment factor ...". 2/ The Secretary-General also notes the view of the Advisory Committee three years later that, under the existing system of adjustment for currency fluctuations and cost-of-living, the strengthening of the United States dollar vis-à-vis the guilder had more than offset the increases in the local cost-of-living. 3/

11. However, in 1994 and 1995, unlike the situation during the previous period, the United States dollar has weakened against the guilder. According to the United Nations Monthly Bulletin of Statistics, the consumer price index from January 1991 to August 1993 for the Netherlands increased by 6.5 per cent, and for the period from September 1993 to June 1995 it rose by an additional 3.4 per cent. Over the period January 1991 to June 1995, the United States dollar lost 11 per cent of its value against the guilder. Thus, in real terms, the emoluments of the members of ICJ have been eroded by some 20 per cent, both by increases in cost-of-living locally and by the downwards movement of the United States dollar against the guilder (i.e., in real terms emoluments now are $121,000 rather than $145,000). As indicated above, if current trends continue, the 1995 ceiling will be 20,299 guilders and floor will be 18,849 guilders. This in itself represents a 13.5 per cent decrease from 1991.

12. At this time, the Secretary-General is of the opinion that the annual emoluments of members of the Court should be maintained at their current level of $145,000. He notes that no retroactive adjustment is made to the salaries of members of the International Court of Justice to offset fluctuations in the value of the United States dollar against the guilder. He would also note that the mechanism used to regulate emoluments against the weakening/strengthening of the dollar has not continued to provide adequate protection for the Judges over the period since the beginning of 1994. Although he would propose that the same mechanism continue to be applied, he would draw the attention of ACABQ to the serious diminution in the real level of emoluments as a result of the use of the United States dollar as a reference currency; action could be taken to restore the real 1991 value of these emoluments, in line with the spirit of Article 32 of the Statute of the Court.

III. OTHER CONDITIONS OF SERVICE

13. The background of other conditions of service of the members of ICJ is provided in paragraphs 16-21 of the report of the Secretary-General to the General Assembly at its forty-eighth session (A/C.5/48/66) concerning the special allowances of the President and of the Vice-President when acting as President; in paragraphs 22 and 23 relating to compensation of ad hoc judges; in paragraphs 24-31 pertaining to the costs of educating children; and in paragraph 42 concerning participation of members of ICJ in the health plan of the Organization.

14. Article 32 of the Statute of the Court provides that the President shall receive a special annual allowance (para. 2) and that the Vice-President shall receive a special allowance for every day on which he acts as President (para. 3). As is the case with remuneration, these allowances "shall be fixed by the General Assembly" and "may not be decreased during the term of office" (para. 5). General Assembly resolution 31/204 of 22 December 1976 provided, in paragraph 3, that the allowances given to members of the Court "shall be reviewed concurrently with the periodic review of their annual salary".

15. The General Assembly, by paragraph 5 of its resolution 48/252 A, decided that the President's special allowance should remain at $15,000 per year and that the special daily allowance paid to the Vice-President when acting as President should remain at $94 per day, up to a maximum of $9,400 per year.

16. Accordingly, the Secretary-General recommends no change in the current level of the special allowances of the President of the Court and the Vice-President when acting as President.

17. Turning to the issue of compensation of ad hoc judges, under Article 31, paragraph 6 of the Statute of the Court, persons whom parties to cases before the Court choose to "take part in the decision on terms of complete equality with their colleagues" are known as ad hoc judges. Further to Article 32, paragraph 4, of the Statute, they "shall receive compensation for each day on which they exercise their functions". The historical background to the determination of the amount of that compensation was presented in the report of

the Secretary-General to the General Assembly at its fortieth session (A/C.5/40/32, paras. 35-41).

18. The General Assembly, in paragraph 3 of its resolution 48/252 A, decided that, with effect from 1 January 1994, the ad hoc judges referred to in Article 31 of the Statute of ICJ should continue to receive for each day they exercise their functions one three-hundred-and-sixty-fifth of the annual salary payable at the time to a member of the Court. The Secretary-General proposes that no change be made in these arrangements.

19. The background to the issue of costs of educating children, as applied to the members of the Court, is provided in paragraphs 24 through 29 of document A/C.5/48/66. By paragraphs 1 and 2 of its resolution 48/252 C, the General Assembly decided that, with effect from 1 January 1994, the President and the members of ICJ who have taken up residence at The Hague should be reimbursed, up to a ceiling of $9,750, for the actual cost of educating their children and up to a ceiling of $13,000, for the actual cost of educating their disabled children, in respect of each child each year up to the award of the first recognized degree and that provision should be made for one related return journey per year in respect of each child from the place of scholastic attendance, when outside the Netherlands, to The Hague.

20. Subsequent to the 1994 review of the level of the education grant by the International Civil Service Commission, the General Assembly, by section V of its resolution 49/223 of 23 December 1994, approved the following increases in the maximum reimbursement levels in seven currency areas, as well as other adjustments to the management of the reimbursement of expenses under the education grant, as recommended by ICSC in paragraph 273 of its report to the Assembly at its forty-ninth session: 4/

Table 4

Education grant

Currency	Maximum admissible educational expenses (local currency) a/	Maximum grant (local currency)	Ceiling for boarding costs (local currency)
Swiss franc	20 097	15 070	4 466
Italian lire	19 800 000	14 850 000	4 400 000
Deutsche mark	29 035	21 775	6 454
Spanish peseta	1 572 710	1 179 530	349 556
Pound sterling	11 250	8 438	2 500
Swedish krona	83 250	62 438	18 500
United States dollar	16 900	12 675	3 770

a/ The amount of the special education grant for each disabled child is equal to 100 per cent of the revised amount of maximum admissible educational expenses for the regular education grant. In areas where education-related expenses are reimbursed in other currencies, the amounts remained unchanged.

21. The Secretary-General would propose that, further to resolution 45/250 C, the increase in the level of the education grant (including that for disabled children) applicable to staff in the Professional and higher categories approved by the General Assembly in resolution 49/223 should be extended, under the same conditions, to the members of the Court, as from the school year in progress on 1 January 1995. The additional requirement for 1995 would be reported in the second performance report for the biennium 1994-1995. With respect to the biennium 1996-1997, the programme budget implications of the proposed change are discussed in paragraph 34 below.

22. ICSC will next review the education grant in 1996. In accordance with paragraph 7 of the seventh report of the Advisory Committee to the General Assembly at its forty-eighth session, 5/ the next review of the costs of educating children of the members of ICJ will be conducted at the time of the next comprehensive review of conditions of service.

23. The Secretary-General has noted that, in its 1994 review of the conditions of service of the members of ICJ, the Advisory Committee did not comment on the request of the Court regarding participation in the Organization's health plan and the Organization's contribution to the charges to sustain participation therein in a manner comparable to the health contributions made by the United Nations for other senior officials. In this connection, the Secretary-General reiterates the view expressed in paragraph 42 of document A/C.5/48/66 that, while the Secretary-General and the two full-time members of ICSC and the Chairman of ACABQ are participants in the Headquarters health plan, the Organization does not contribute to the cost of participation. Members of the Court, in addition to their current option of joining The Hague Nuts-Aegon health insurance plan of the United Nations system, retain the option of joining the Van Breda plan, or the Headquarters health plan if they choose to retire in the United States, upon payment of the full cost of the premium.

24. No change is proposed with regard to other conditions of service of the members of ICJ.

IV. PENSIONS

25. The members of ICJ are entitled to retirement pensions in accordance with Article 32, paragraph 7, of the Statute of the Court, the specific conditions of which are governed by regulations adopted by the General Assembly. The Assembly, in paragraph 1 of its resolution 48/252 B, invited the Secretary-General to undertake a study of the pension scheme for the members of ICJ and to report thereon to the Assembly at its forty-ninth session.

26. A review of the pension benefits and the corollary aspects of the current pension scheme was presented in the reports of the Secretary-General to the General Assembly at its forty-eighth and forty-ninth sessions (A/C.5/48/66, paras. 32-41 and A/C.5/49/8, paras. 6-16). In reviewing the latter report, the Advisory Committee reiterated its 1994 recommendation that it was not necessary to recommend a change in the pension benefits of the members of the Court. The Advisory Committee expressed its view that the request by the Assembly for a study of the pension scheme for the members of ICJ had not been fully addressed.

It recommended that the Secretary-General include a comprehensive review of the pension scheme for the members of the Court in his report to be submitted to the Assembly at its fiftieth session. The report should include, on the advice of qualified actuaries, a review of benefit provisions, including those of retirement age, minimum period of service, rate of accumulacion of pension benefits, early retirement benefits, contributory participation, cost-of-living adjustments and retroactive rights of pensioners. 6/

27. Pursuant to the request of the Advisory Committee, the Secretary-General has sought the advice of a consulting actuary on the pension scheme of the members of ICJ. The text of the comprehensive review is annexed to the present report. The Secretary-General would note that the review conducted by the consulting actuary corroborates in technical terms most of the recommendations he presented to the General Assembly at its forty-eighth session (A/C.5/48/66, paras. 32-41). He recommends, in the light of the conclusions of the actuarial review, that:

(a) The pensionable remuneration of a Judge should be defined as being equal to half the annual salary;

(b) The pension should constitute the pensionable remuneration of a Judge who completes a nine-year term, with a proportional reduction for a Judge who has not completed a full term. A judge who is re-elected should receive 1/300th of his pensionable remuneration for each further month of service, up to a maximum pension of two thirds of annual salary;

(c) The pension scheme should be non-contributory;

(d) An actuarial reduction factor at a rate of one half a per cent per month should be applied in a case of early retirement;

(e) Surviving spouses should receive a pension equal to 60 per cent of a Judge's pension; alternatively, Judges could opt to increase a spouse's pension up to a maximum of a further 50 per cent by means of an actuarial reduction in their pension;

(f) Upon remarriage, a surviving spouse should be granted a lump sum equal to twice the amount of the spouse's current annual benefit as a final settlement.

28. Should the proposals above with regard to pensions be found acceptable, the Secretary-General would propose that the Registrar of the Court amend the pension scheme regulations accordingly.

V. ANALYSIS OF THE PRACTICE OF THE COURT WITH RESPECT TO ARTICLE 16, PARAGRAPH 1, OF THE STATUTE OF ICJ

29. In paragraph 8 of its twelfth report to the General Assembly at its forty-ninth session, 7/ the Advisory Committee expressed its view that the broader review of the conditions of service of the Judges should include an analysis of

the practice of the Court with respect to Article 16 of the Statute of ICJ. That Article provides as follows:

> "1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.
>
> "2. Any doubt on this point shall be settled by the decision of the Court."

30. In keeping with Article 16, paragraph 2, of its Statute, the Secretary-General requested the Court to provide clarification on the matters raised by the Advisory Committee. The Court interprets the provisions of the Article as prohibiting the Judges of the Court from exercising or maintaining any political or administrative function, whether international, national or local, whether commercial or otherwise; engaging in any other occupation of a professional nature, inter alia, holding a position in a commercial concern, engaging in the practice of law, maintaining membership in a law firm or rendering legal or expert opinions; or holding a permanent teaching or administrative position in a university or faculty of law.

31. Under the authority vested in the Court under Article 16, paragraph 2, of its Statute, ICJ has, in view of the judicial character of the activities involved, interpreted the bar to the members of the Court engaging in other occupations of a professional nature as not debarring a limited participation of Judges in other judicial or quasi-judicial activities of an occasional nature, as well as scholarly pursuits in the sphere of international law as members of learned societies or as occasional lecturers. The Judges accepting such occasional activities give the fullest precedence to their supervening duties as members of the Court. Based on a long-standing tradition of the Permanent Court of International Justice founded in 1922, as well as the recorded intention of the United Nations Conference on International Organization that adopted the text of Article 16 of the Statute, the Court further interpreted Article 16 as permitting the members to accept occasional appointments as arbitrators. In doing so, the Court referred to a similar practice existing in the courts of a number of Member States, such as Australia, Canada, Denmark, France, Germany, India, the Libyan Arab Jamahiriya, the Netherlands, Norway, Sweden and Tunisia, as well as some states of the United States of America.

32. The Court has consistently taken the position that contributions by its members to third-party settlement of disputes by legal processes in other forums, as by occasional service as arbitrators, are compatible with the Judges' functions as members of the Court. These activities are subject, however, to two conditions: the first is that the Judges must give absolute precedence to their obligations as members of the Court; and the second is that they should not accept appointment in an arbitral case, which, in another phase, is subject to being submitted to the Court.

33. The Court will continue to keep under review any questions that may arise of the compatibility of the functions of judges with the Statute of ICJ and with their supervening obligations.

VI. FINANCIAL IMPLICATIONS

34. Should the General Assembly approve the proposals contained in paragraphs 21 and 27 above, the programme budget implications of the changes proposed in the pension scheme for members of ICJ and costs of educating children of its members are estimated at $760,500 for the biennium 1996-1997 as reflected in table 5 below. The Secretary-General concurs with the recommendations of the consulting actuary with regard to the pension regime of the Court and therefore reiterates his proposals set out in his report to the General Assembly at its forty-eighth session (A/C.5/48/66). No changes are proposed to the emoluments and other conditions of service of the members of the Court.

Table 5

Programme budget implications, 1996-1997

	US$
1. Education grant increase (para. 21)	11 700
2. Pensions (para. 27)	748 800
Total	760 500

35. As indicated above, the cost of educating children of members of the Court is estimated at $11,700. Should the proposals of the Secretary-General in that respect be approved by the General Assembly, no additional appropriation is proposed at this time, under section 5, International Court of Justice, of the proposed programme budget for the biennium 1996-1997. It is proposed instead to absorb the requirements to the extent possible, within resources proposed for such purpose, in paragraph 5.12 (b) of the 1996-1997 proposed programme budget, since revision to the level of resources might be warranted as the term of office of five Judges comes to an end during the biennium 1996-1997.

36. In respect of the estimated requirements of $748,800, arising from the Secretary-General's proposals, relating to additional pension payments that would be approved by the General Assembly for former Judges and widows of Judges, for the 1996-1997 biennium, the requirements are seen as relating to inflation and should be treated outside the procedures related to the contingency fund, as provided for in paragraph 11 of annex I to Assembly resolution 41/213 of 19 December 1986.

VII. NEXT COMPREHENSIVE REVIEW

37. By paragraph 7 of its resolution 48/252 A, the General Assembly decided that the periodicity of review of the conditions of service of the members of ICJ should be determined at its fiftieth session.

38. In paragraph 1 of its resolution 31/204 of 22 December 1976, the General Assembly decided that the annual salaries of members of ICJ should normally be reviewed every five years. Should this option be upheld by the Assembly, the next comprehensive review would be undertaken at its fifty-fifth session in the year 2000.

39. Should the General Assembly decide to continue the three-year review cycle established at its forty-fifth session (resolution 45/250 A, para. 4), the next comprehensive review by the Assembly would be undertaken at its fifty-third session in 1998.

40. Should the General Assembly decide to approve the recommendation of the Advisory Committee made in paragraph 4 of its seventh report to the Assembly at its forty-eighth session 5/ that the reviews be carried out on a biennial basis, the next comprehensive review would take place in the year 1997.

41. The Secretary-General would note that the longer, five-year cycle of review has posed difficulties in the past in terms of keeping up to date the emoluments and conditions of service of members of the Court. At the same time, biennial reviews would appear to be too frequent to enable significant trends or new elements in conditions of service to be discerned.

42. Accordingly, the Secretary-General would favour the three-year cycle of review established by the General Assembly in its resolution 45/250 A.

Notes

1/ See A/C.5/35/33, A/C.5/38/27, A/C.5/40/32 and Corr.1, A/C.5/45/44 and A/C.5/48/66, as well as General Assembly resolutions 35/220 of 17 December 1980, 38/239 of 20 December 1983, 40/257 of 18 December 1985, 45/250 of 21 December 1990 and 48/252 A of 26 May 1994.

2/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 7 (A/45/7 and Add.1-14), document A/45/7/Add.10, para. 13.

3/ A/48/7/Add.6, para. 4.

4/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 30 (A/49/30).

5/ A/48/7/Add.6.

6/ A/49/7/Add.11, paras. 6-8.

7/ A/49/7/Add.11.

ANNEX

Review of benefit provisions under the pension scheme for the members of the International Court of Justice by the Consulting Actuary

I. SUMMARY

Introduction

1.1 In document A/49/7/Add.11, which was submitted to the General Assembly at its forty-ninth session, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) discussed certain aspects of the pension scheme for the members of the International Court of Justice. In paragraph 8 of that document, the Advisory Committee recommended that "... the Secretary-General include a comprehensive review of the pension scheme for the members of the International Court of Justice in his report to be submitted to the General Assembly at its fiftieth session. That report should include, on the advice of qualified actuaries, a review of benefit provisions, including those of retirement age, minimum period of service, rate of accumulation of pension benefits, early retirement benefits, contributory participation, cost-of-living adjustments and retroactive rights of pensioners ...".

1.2 At the request of the Secretariat, Buck Consultants have completed a review of the benefit provisions of the pension scheme for members of the International Court of Justice pursuant to the recommendation set forth in document A/49/7/Add.11. Our report is contained herein.

1.3 Our review is based in part on documents furnished by the Secretariat and Court, which provide information on the past and current provisions of the scheme and on various discussions that have taken place relating to scheme benefits. A summary of the documents that were furnished is given in the Schedule to this report. In addition, we met with the Vice-President of the Court and representatives of the Secretariat in a joint meeting at United Nations Headquarters in New York for an exchange of views on the scheme. Following that meeting, the Court provided demographic data on all current and former members of the Court; these data have also been considered in our review.

1.4 Given the unusual nature of employment and retirement patterns in the Court and the absence of a large body of comparative data on the benefit provisions of schemes in other high courts, we necessarily have had to rely also on general principles regarding the construction of pension schemes, in order to form an opinion as regards the appropriateness of the benefit provisions of the scheme.

Analyses performed

1.5 The analysis, which is presented in detail in section II of this report, was in two main parts. First, while recognizing that the benefits of the scheme should be treated as sui generis as judicial pensions are generally treated, we examined whether the provisions of the scheme were reasonable based solely on general pension design principles and the demographic data for members of the Court. Our objective in this part of the analysis was to obtain an independent opinion from that provided by the somewhat limited data available on the provisions of comparative schemes. Second, we examined each benefit provision separately in terms of appropriateness when measured against good design practices, and against the corresponding provisions of the comparator schemes where such information was available.

1.6 It must be emphasized that pension schemes generally reflect a compromise between what the sponsor would wish to provide if there were no cost considerations and what the sponsor is in a position to offer. Our analysis assumes that cost is not a factor in providing pensions to members of the Court to the extent that cost constraints would modify the benefit provisions that would be found in an appropriate pension scheme design. Clearly, it would not be possible to consider the extent to which cost constraints might affect the provision of benefits without engaging in discussions with the United Nations on this matter.

Findings

1.7 Our key findings are as follows:

(i) We are of the opinion that the pre-1 January 1991 pension regime is reasonable and appropriate, in all respects, on the basis of general principles of pension design and the benefits provided by comparator courts.

(ii) We believe that the adoption of fixed pension amounts has the appearance of being arbitrary. A return to the prior scheme formula coupled with the introduction of an appropriate definition of pensionable remuneration would, we believe, lead to a better understanding of the scheme.

(iii) We are of the opinion, if pensionable remuneration is defined to be equal to annual salary, that there would not be a need to introduce a local currency provision. However, if pensionable remuneration is defined as annual salary less the cost-of-living allowance for The Hague, consideration should be given to introducing a system of initial pension adjustments and subsequent payment in local currency (i.e., a two-track system) to protect those who have retired or will eventually retire to high-cost countries.

(iv) We believe the plan should remain non-contributory.

(v) A small number of minor changes should be made to the plan, as follows:

- Actuarial reduction factors at the rate of ½ per cent per month should be introduced into the scheme rules to simplify the calculation of actuarial equivalence in future early retirement cases.

- A lump sum of twice the pension should be paid as a settlement to surviving spouses who remarry.

- The surviving spouse's pension multiplier could be increased to 60 per cent or, alternatively, members could be offered the option of electing increased spouses coverage, up to a maximum of a further 50 per cent, by means of an actuarial reduction in their pension.

II. ANALYSIS

General principles

2.1 Assume that we are attempting to develop an appropriate pension design for members of the Court based solely on general principles and the demographic characteristics of newly elected and retiring members. We believe that such an exercise would provide a valuable independent measure of the appropriateness of the benefit provisions. We also expect that the data used in this analysis would be of interest to the reader of this report.

2.2 The modern view on pension scheme design is that an acceptable scheme should provide a reasonable replacement income, after allowing for social security and personal savings, following a full career with the employer. A "reasonable replacement income" is generally held to be an income sufficient to maintain a standard of living after retirement equivalent to that enjoyed in the immediate years prior to retirement. A "full career" is usually defined as a career assuming entry age for a typical new entrant at the start of his or her career and continued employment until normal retirement age.

2.3 It has been found for most industrialized countries that a reasonable replacement income is in the range of 60 per cent to 70 per cent of pre-retirement final pay; less than 100 per cent is required because expenses in retirement are usually lower than those incurred while working. A higher range of replacement income would be warranted for the lower paid and also where cost-of-living adjustments are not paid.

2.4 The definition of full career varies by employer hiring patterns and category of employment. For example, in white collar undertakings such as banking, a full career might be in the range of 30 to

40 years. By way of another example, some of the international organizations hire seasoned Professional staff at their mid-career and here a full career would be in the neighbourhood of 20 to 25 years.

2.5 It is also held that a sound modern pension design should provide proportionate benefits for those retiring with less than a full career, and adequate benefits for death in service and disability. Finally, a sound modern design for a civil service scheme (which we believe is the appropriate model for the Court) should provide reasonable survivor pensions on death after retirement and provision for cost-of-living adjustments.

2.6 Based on our professional knowledge of sound pension scheme design, we are of the opinion that the provisions of the scheme for members of the Court as regards disability, death in service and death after retirement are generally reasonable. We are also of the opinion that the practice of providing cost-of-living adjustments by virtue of conferring retroactive rights to pensioners when members' salaries are updated is in keeping with modern thinking for civil service schemes, although the practice of providing these somewhat infrequently when remuneration is adjusted is below par.

2.7 The most difficult issue in terms of the design concerns the rate of accrual of benefits. This difficulty arises because of the unusual nature of service in the Court and the relatively advanced age at which members are elected and subsequently serve. However, it is clear, if one takes the view that a "full career" in the service of the Court is two full terms (i.e., 18 years), that the pension regime in effect prior to 1 January 1991 would by definition satisfy the principles of sound design, since it would provide a pension of two thirds of final pay after two terms.

2.8 The data provided by the Court would also appear to confirm the view that the rate of accrual of the pre-1 January 1991 pension regime is indeed reasonable. Various statistics derived from these data are presented in the table below.

Table

SUMMARY OF DEMOGRAPHIC DATA FOR THE INTERNATIONAL COURT OF JUSTICE

Item	Number	Average	Median	Lowest	Highest
Justices in service	15				
Age at entry		58	58	48	67
Current age (31/12/95)		64	65	52	71
Age at expiration of current term		68	68	57	78
Service at expiration of current term		10	9	2	27
Retired Judges	9				
Age at entry		60	58	50	79
Age at retirement		70	72	58	88
Service at retirement		10	9	4	21
Former retired Judges (now deceased)	28				
Age at entry		64	62/63	55	78
Age at retirement		73	73/74	58	87
Service at retirement		9	9	2	21
Age at death		86	88	67	96
Years of pension		12	13	2	23
Justices who died in service	8				
Age at entry		60	57/59		
Age at death		71	67/77	57	87

2.9 Table A.1 indicates that the average age at entry for all cohorts is around age 60, although there is a tendency in the modern era for the entry age to be somewhat lower (i.e., around age 58). It also indicates an average service of 10 years' duration, and an average retirement age in the range of 70 to 72.

2.10 It can be seen that the highest recorded service was 21 years, that the average duration of pension for a retired member is 12 years and that 8 out of the 36 deceased Judges, or approximately 22 per cent, died in service and therefore prior to receipt of a pension payment.

2.11 Since a "full career" would fall mathematically between an "average" career and the maximum attained, one can deduce that a full career would be somewhere in the range of 10 to 21 years. Although it is difficult to be precise owing to the limited nature of the data, and the fact that there is no mandatory retirement age, we believe that these data provide support to the view that a full career can reasonably be taken to mean two full terms by the common yardsticks applied to the more usual pension schemes.

2.12 We believe that the analysis presented above confirms, absent any other considerations pertaining to the nature of judicial service in the high court, and based solely on general principles as applied to pension scheme construction, that the overall design of the scheme in force prior to 1 January 1991 is not unreasonable.

Additional considerations

2.13 It could be argued, in establishing an appropriate level of replacement income, that consideration should be taken of sources of income from prior employment. We have difficulty with this argument, for several reasons. First, some members of the Court begin service at an age when they would not typically be entitled to full retirement benefits from their previous employment and, indeed, at an age when there could be a significant loss of the benefits that would otherwise accrue if they had not agreed to serve on the Court. Second, even if one were to assume that an adequate source of income from prior employment existed because a member joined the Court while in receipt of a full pension from a former employer, there would be practical difficulties - in addition to questions of equity between members - in attempting to modify the accrual rate to take account of such income. Third, if one subscribes to the view that an adequate replacement income should be provided by the scheme, it follows that one must either choose to ignore other sources of income in measuring pre-retirement and post-retirement income or choose to include both sources when measuring pre-retirement and post-retirement income; in either case, we arrive at the same general conclusion that it is appropriate to provide pension benefits that replace a reasonable proportion of the income earned while serving as a member of the Court.

2.14 It could be argued that "social security" and "personal savings" should be taken into account, leading to a lower accrual rate. Social security benefits are generally taken into account in arriving at an appropriate replacement income in the design of pension schemes. However, we do not believe it would be appropriate to attempt to include recognition of this element for the members of the Court given that it would be difficult to arrive at a simple formula in view of the diverse nationalities of the members. Moreover, it would be usual to offset only that portion of the social security benefits earned while in the employ of the plan sponsor. We expect that members will earn little in the way of social security benefits while serving on the Court. With regard to whether "personal savings" should be a factor, this is addressed later in the report under the topic, Contributory participation (paras. 2.36 and 2.37).

2.15 We believe that the central question regarding the appropriateness of the scheme from the viewpoint of general principles is related to the question of the definition of pensionable remuneration. As we understand it, remuneration prior to 1991 consisted of a base element coupled with a cost-of-living allowance to reflect the additional cost of living in The Hague and with various other allowances such as those for children's education. In 1991, the cost-of-living allowance was "rolled" into the base pay element. It can be argued that pensionable remuneration should not include full recognition of the cost-of-living adjustment for The Hague given that the majority of retired and retiring members of the Court will choose or be obliged to retire outside the Netherlands. We expect that this view formed the basis for ACABQ in its recommendation to move to a fixed dollar pension approach in 1991 rather than to apply the revised salary structure to the pension scheme design then in force.

2.16 We are of the opinion that the question of which elements to include in pensionable remuneration lies at the heart of the difference in views between the Court and ACABQ. This matter is therefore discussed in some detail later in this report in the discussion on pensionable remuneration.

Comparative data

2.17 As an alternative to looking to general principles in order to assess the reasonability of a particular pension scheme design, one can also look to comparative schemes. While only somewhat limited data are available to us from the documentation, it is instructive to compare the key provisions of the scheme for members of the International Court of Justice with those of other courts. The relevant data are set forth in paragraph 11 of document A/C.5/49/8. These data confirm that the pension regime in existence prior to 1 January 1991 is reasonable when compared against the schemes of other high courts.

Review of benefit provisions

2.18 The review in this section of the report is based on the pension regime in effect prior to 1 January 1991, since we understand that this is the formal scheme and was modified only to the extent that fixed pension amounts were adopted effective 1 January 1991.

Normal retirement age

2.19 The scheme provides for normal retirement upon attainment of age 60 provided, inter alia, the member of the Court has completed three years of service. Normal retirement age and service requirements in the scheme of the comparator courts generally are higher. For example, the United States Supreme Court has a normal retirement age of 65 after 15 years of service or 70 years of age after 10 years of service. Notwithstanding the comparative data, we find the normal retirement age provisions in the scheme to be reasonable, for the following reasons:

- In practice, relatively few members of the Court have chosen to retire at or before age 60; this is not surprising given the average age at entry. Bearing in mind that the average age at retirement is age 70, it is clear that the age at which members typically take retirement is close to the normal retirement age found in the comparator schemes.

- A liberal normal retirement age provides a necessary mechanism for the orderly retirement of members.

- The comparative data may not be appropriate for determining normal retirement age for members of the Court, given that the terms of service and other conditions are quite different between the Court and the other high courts.

Minimum period of service

2.20 The minimum period of service under the present scheme is three years. A member retiring with three or more years of service, but after completing less than a full term of nine years, receives a proportionate benefit.

2.21 We believe that it is appropriate to require only a small period of service before granting a right to a pension, in accordance with modern thinking and indeed the trend in national legislation on this subject. In our view, the present requirement of three years of service is not unreasonable.

2.22 We note that the requirement in an earlier scheme for members of the Court was a minimum of five years of service. Such a minimum would also, we believe, be reasonable on general grounds. However, it would be unusual in a modern pension scheme to increase a minimum service requirement and we would recommend against it in this instance unless

the General Assembly had other reasons to want to see an increase in the minimum period of service. In this regard, we would note that the application of proration to the pension of members retiring with less than a full term greatly moderates the cost of providing pensions to these members.

Rate of accumulation of benefits

2.23 Under the pension regime in effect prior to 1 January 1991, the scheme provided a pension of 50 per cent of annual salary after completion of nine years of service with an additional one three hundredth of that amount for each additional month in service, subject to a maximum pension of two thirds of annual salary. Under the regime enacted effective 1 January 1991, the pension was fixed at US$ 50,000 after nine years of service, with a proportionate amount for service less than nine years and an additional US$ 250 per month for service in excess of nine years to a maximum of US$ 75,000 after 18 years of service.

2.24 We are of the opinion that a soundly designed pension scheme should relate pension benefits directly to pay at or near retirement by formula rather than by fixed amount, since this provides an automatic link between pre-retirement and post-retirement income. This view is supported by the analysis presented earlier and also by the comparative data. We therefore have sympathy with the views expressed by the Court, and the Secretary-General in document A/C.5/49/8, as regards a request to return to the prior pension regime.

2.25 While we believe that the accrual rate in the pension regime in effect prior to 1 January 1991 is reasonable and, indeed, appropriate, we would note that usual practice is to apply an accrual rate to an appropriate definition of pensionable remuneration rather than annual salary. While pensionable remuneration is often defined as annual salary, this is not always the case. Indeed, it is common to exclude special allowances, such as those for education, travel and so forth and, in the case of schemes covering employees who serve overseas, cost-of-living allowances. We expect that the intent of ACABQ in arriving at fixed pension amounts was, in fact, to apply the existing accrual rates to a measure of pensionable remuneration that was lower than annual salary. The rationale for not using the full annual salary was, presumably, that the revised salaries now included cost-of-living adjustments for service at The Hague. We believe that the establishment of an appropriate definition of pensionable remuneration is connected to whether payment should be made in local currency. These questions are discussed together, later in this report.

2.26 In summary, we would recommend that the pension formula relating to the accrual rate revert to that in effect immediately prior to 1 January 1991, subject to a review of the definition of pensionable remuneration. Such a change would make clear the relationship between pre-retirement and post-retirement income and thus facilitate direct

comparison with other schemes. The present regime of fixed pensions has the appearance of being arbitrary.

Early retirement benefits

2.27 The scheme provides that members of the Court retiring before age 60 may elect to receive an immediate pension of equivalent actuarial value to the pension which would have been paid at age 60. The actuarial basis for determining actuarial equivalence is not defined in the scheme rules. We believe that these early retirement provisions as set forth in the scheme rules are reasonable and in keeping with sound, modern pension design.

2.28 We would recommend that actuarial tables or, preferably, actuarial pension reduction factors be adopted as part of the scheme rules; this would provide both the members of Court and the Secretariat with a readily available basis for determining early retirement pensions. To provide further guidance in this matter, we have performed calculations to determine an appropriate set of actuarial factors, based on the latest United Nations mortality tables (the 1993 United Nations tables) and economic assumptions adopted for the regular valuation of the United Nations Joint Staff Pension Fund as of 31 December 1995. The calculations indicated that the actuarial equivalencies can be approximated very closely by a standard reduction of ½ per cent per month by which the pension commencement date precedes age 60. We would recommend that these factors be adopted as part of the scheme rules.

2.29 We would note that many pension schemes apply lower or "subsidized" early reduction factors than those determined under strict actuarial equivalence. We would see no merit in adopting "subsidized" factors unless the Secretariat is of the view that early retirement benefits should be improved slightly, rather than being left as a neutral matter from an actuarial viewpoint. If the Secretariat is of the view that lower early retirement factors are appropriate, these could be set at 1/3 per cent or ¼ per cent per month of early retirement.

Disability benefits

2.30 The scheme provides a disability pension equal to the amount of the retirement pension that would have been payable to the member had he or she at the time of leaving office completed the current term of election, subject to a minimum pension of US$ 25,000. We find these provisions to be reasonable and would recommend that they be retained.

Surviving spouse's pensions

2.31 The scheme provides the following surviving spouse's pensions, subject to certain minimum benefits:

- On death-in-service, a pension of one half of the disability pension that would have been payable to the member if he or she had become disabled immediately preceding death.

- On death following disability retirement, normal retirement, or early retirement with receipt of pension, a pension of one half of the member's pension.

- On death following early retirement but before receipt of pension, one half of the early pension that would have been payable had payment commenced at the date of death.

2.32 It was noted in document A/C.5/49/8 that the Court requested an increase in the surviving spouse's pension to 60 per cent of the member's pension, and that a lump sum payment be paid upon remarriage of the surviving spouse as settlement for the spouse's pension. The Secretary-General concurred with the Court's view on these matters. In this regard, we would note that pension schemes in several European countries, such as Germany and the Netherlands, commonly provide surviving spouses' pensions at the rate of 60 per cent rather than the rate of 50 per cent more commonly found in the United States and within the United States-based international organizations.

2.33 We are of the view that a rate of 60 per cent for surviving spouses pensions is not unreasonable. We also are of the view that a lump sum settlement of twice the annual pension upon the remarriage of the surviving spouse is reasonable.

2.34 We would note that an alternative to increasing the rate for a surviving spouse's pension to 60 per cent would be to provide retiring members of the Court with an option to elect an increased survivor pension, financed by an actuarial reduction in the pension otherwise payable. This approach is that adopted by all of the United States-based international organizations, where the first 50 per cent is provided at no cost but increases above this level (usually in 10 per cent increments to a maximum of 50 per cent) are financed by the retiree through an actuarial reduction in pension. The Secretariat may wish to consider this alternative approach, which is actuarially neutral to the sponsor, if cost is an issue.

Children's benefits

2.35 We find the present scheme provisions to be reasonable.

Contributory participation

2.36 While it may appear to be reasonable to ask members of the Court to contribute to their pensions, we believe there are sound arguments against such an approach. These arguments are as follows:

- In the more usual pension schemes where members join at an early age and may remain members for 40 years, it is not unreasonable

or impractical to establish a contribution requirement. For members of the Court, however, anticipated service is much lower, which leads us to believe that meaningful cost-sharing could not occur without the members' contributions being set at inordinately high levels.

- In the more usual pension schemes, members' contributions are made on the expectation that they will be returned as part of the pension payments over many years of retirement. This is not the case for members of the Court, who often serve beyond the age when most employed persons retire and who have a more limited expectation of return. Moreover, those members who choose to serve longer will be treated inequitably in comparison with those who serve the Court for a limited period, because they will be required to contribute over a longer period while expecting to receive pension payments over a shorter number of years. This issue does not arise in the more usual pension arrangement because the vast majority of members retire either before or at normal retirement age with the result that the expected length of pension payments is relatively similar for all retirees.

- It would not seem appropriate to require contributions if the scheme is not funded.

- We expect that in those cases where the comparator data indicate a requirement for the members to make contributions, service in the Court would be preceded by service within the court system in general in the country in question. Under these circumstances, contributory participation is not unreasonable. However, this does not lead to a conclusion that contributory participation should be required for members of the International Court of Justice, where the circumstances are quite different.

2.37 In view of the above comments, we would recommend that the scheme remain non-contributory.

Pensionable remuneration

2.38 It was indicated earlier in this report that we are of the opinion that pensions for members of the Court should be determined by formula rather than by fixed amount. In this connection, we observed that the pension regime in existence prior to 1 January 1991 provided a reasonable formula based on general pension design principles and on comparative data regarding the schemes of other high courts. We made clear, however, that the accrual rate formula under a pension scheme was only one element and that an appropriate definition of pensionable remuneration should also be contained in scheme rules. We believe that it is differences in views on the definition of pensionable remuneration that have led to a difference of views between the Court and ACABQ on the pension amounts that became payable on 1 January 1991, although this probably has not been recognized by the parties concerned.

2.39 While recognizing the unusual nature of international judicial service, we believe there are parallels, in the commercial field and in the international organizations, that are helpful in illustrating the main issues and their typical resolution.

2.40 In the commercial field, multinational corporations have long faced the problem of providing appropriate pensions for employees who serve overseas for some of their career. A difficulty arises for multinationals in determining pensionable remuneration in the case of employees who serve in high-cost countries. Usually, such employees will receive special allowances above their base pay (which normally reflects pay for an equivalent job in the home country) to compensate for the cost-of-living in such countries; however, it is not usual to include these allowances in the definition of pensionable remuneration where it is clear that the employee in question will return to his or her home country, since to do otherwise would lead to a replacement income for those who served overseas greater than that received by similar employees who had not served overseas.

2.41 International organizations face even greater problems because employees retire to home countries all over the world. Because the United Nations remuneration system for Professional staff is based on the United States dollar with cost-of-living adjustments for service in high-cost countries, pensions based on the United States dollar component only would not be adequate to those retiring in high-cost countries. The United Nations has chosen to handle this problem by means of a pension adjustment system, part of which provides adjustment in the initial amount and part of which provides for ensuing payment in local currency.

2.42 With regard to the pension scheme for members of the International Court of Justice, the key question is whether pensionable remuneration should be defined as annual salary or as annual salary less a component to reflect that portion of salary attributable to cost-of-living adjustments for service in The Hague. We believe that either view could be supported, as follows:

(i) It could be argued, in support of including the full amount of salary in the definition of pensionable remuneration, that the full annual salary reflects the exceptional nature of the qualifications and experience required to serve on the Court, and the fact that it reflects the high cost of serving at The Hague is not relevant.

We believe that, under this argument, there would not be such a strong case for seeking adjustments to pensions for those who retire to "high-cost" countries because the Netherlands would fall into this category. Thus, although the United States dollar may be weak against the currencies in certain high-cost countries, this presumably is reflected in the cost-of-living component of annual salary.

We also believe that, under this approach, full retroactivity should be accorded to pensioners and their beneficiaries since not to do so would lead to structural inequities over time between different cohorts of pensioners.

Of course, one could argue that this definition is overly generous to those who retire to "low-cost" countries and the United States of America. However, if one were to attempt to adjust pensions downwards for such retirees, one would presumably be prepared to adjust pensions upwards for certain retirees who retire to countries with particularly high costs (e.g., Japan), with the result that a common definition of pensionable remuneration would no longer apply.

(ii) It could be argued that the portion of annual salary excluding cost-of-living allowances is the appropriate salary for pension purposes. This is equivalent to arguing that remuneration should reflect only that which would be paid in the United States for similar service.

It seems to us that under the view expressed in (ii) above, a reasonable replacement income will be realized only for those members of the Court who are retired in the United States or low-cost countries. Clearly, an inadequate replacement income could result for retirees in high-cost countries. Indeed, the Court has already expressed a view that certain retirees in such countries have an inadequate pension as a result of the weakening of the United States dollar vis-à-vis local currency.

We believe that if one subscribes to argument (ii), one must also logically consider introducing a pension adjustment system to protect those who retire to high-cost countries. Such a system would conceivably operate in a similar fashion to that employed within the United Nations Joint Staff Pension Fund (UNJSPF). Thus, it would include an adjustment to the initial pension in high-cost countries together with a mechanism to convert pensions to local currency and adjust them thereafter based on local inflation. It would also follow that the principle of full retroactivity to pensions would no longer apply, because pensions would no longer be correlated to the annual salaries of serving members. Such pensions would now take on a life of their own, being adjusted in the future only by the cost-of-living adjustment pertaining to that country.

Although we recognize that the pension scheme for members of the Court should neither follow from nor establish a precedent for the UNJSPF, we believe that the mechanisms that have been employed by the Fund to derive the initial adjustments, subsequent currency conversion and cost-of-living adjustments could be employed for the scheme.

2.43 In summary, we would conclude that pensionable remuneration could be defined as full annual salary or the portion of such salary that does not reflect the cost-of-living in The Hague. In the former case, there would be less need for a local currency provision with attendant initial adjustment in pension for high-cost countries, and the principle of full retroactivity for pensioners would be maintained. In the latter case, retirees in high-cost countries will not achieve the levels of replacement income envisaged in the scheme design during periods where the United States dollar is weak; this would therefore suggest a need for a two-track pension adjustment system along the lines of that employed within the UNJSPF.

2.44 In practical terms, the choice would appear to be between simplicity with some inequity on the one hand and complexity with equity on the other hand. If the full annual salary were applied to the pension regime in force prior to 1 January 1991, simplicity would result but there would be some inequity as regards those who retire to particularly high-cost countries. If only a portion of the full annual salary were applied to pensionable remuneration with the introduction of a local currency pension adjustment system, there would be a larger degree of equity coupled with more complexity in administration.

2.45 On balance, we would tend to favour the simple approach given the size of the group in question. It follows therefore that we would favour a return to the 1 January 1991 pension regime but with application of the revised annual salaries that became effective on that date. We would also find acceptable the proposal of the Secretary-General to "phase in" the increases during a transition period.

III. SUMMARY AND CONCLUSIONS

3.1 Buck Consultants have reviewed the benefit provisions of the pension scheme for members of the International Court of Justice. One principal conclusion is that the pension regime in effect prior to 1 January 1991 is reasonable and appropriate based on general principles of pension scheme construction and comparative data. However, in our opinion, a return to the earlier pension regime should be coupled with a review by the Secretariat of the definition of pensionable remuneration. Our report presents an argument for either (a) including all annual salary in the definition or (b) including only the equivalent United States dollar portion in conjunction with the introduction of a two-track adjustment system.

3.2 We are also of the opinion that several, relatively minor, changes could be made to the scheme provisions. These include the adoption of early retirement reduction factors, the payment of a lump sum equal to two years' pension payments for surviving spouses who remarry and a change in the surviving spouse's pension multiplier to 60 per cent or, alternatively, the introduction of an option to elect additional spouse's coverage through a reduction in the member's pension.

SCHEDULE

Documents reviewed

1.	Communication from the Court enclosing demographic data		24 July 1995
2.	A/49/7/Add.11	Twelfth report of the Advisory Committee on Administrative and Budgetary Questions	8 March 1995
3.	A/C.5/49/8	Report of the Secretary-General	10 October 1994
4.	Internal ICJ memorandum on pension entitlements of Judges of the Permanent Court of International Justice		26 May 1994
5.	A/C.5/48/66	Report of the Secretary-General	14 March 1994
6.	A/48/7/Add.6	Seventh report of the Advisory Committee on Administrative and Budgetary Questions	31 March 1994
7.	A/45/7/Add.10	Eleventh report of the Advisory Committee on Administrative and Budgetary Questions	6 December 1990
8.	A/43/7/Add.6	Seventh report of the Advisory Committee on Administrative and Budgetary Questions	11 November 1988
9.	A/C.5/45/44	Report of the Secretary-General	15 November 1990
10.	A/C.5/40/32	Report of the Secretary-General	22 October 1985
11.	A/C.5/38/27	Report of the Secretary-General	8 November 1983
12.	A/C.5/31/13	Report of the Secretary-General	3 September 1976
13.	Other:	Miscellaneous documents	